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CONTENTS

	PAGE
LAW LIBRARY JOURNAL PUBLISHES LECTURES DELIVERED BEFORE THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK	1
THE INFLUENCE OF JUDGE CARDOZO ON THE COMMON LAW ..... *Hon. Irving Lehman*	2
LAW SCHOOL ASSOCIATION ADOPTS EMERGENCY RESOLUTIONS	10
THE FEDERAL ANTI-TRUST LAW ..... *Thomas D. Thacher*	11
IMPROVING THE INDEX TO LEGAL PERIODICALS—HOW WOULD YOU DO IT .... *B. B. Druker*	19
TITLE PAGE, VOLUME 34 LAW LIBRARY JOURNAL (1941)	
SAVING TIME IN RECORDING STATUTES AND SESSION LAWS ..... *Raymond C. Lindquist*	21
THE LIBRARY OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS ..... *Joseph G. Gauges*	23
COUNCIL OF NATIONAL LIBRARY ASSOCIATIONS	25
CURRENT COMMENTS	26
PROGRESS REPORT OF THE COMMITTEE TO COMPILE A BIBLIOGRAPHY OF LEGAL BIBLIOGRAPHIES ..... *Erwin Pollack*	29
BOOK REVIEW: AMERICAN BOOK COLLECTORS AND COLLECTING FROM COLONIAL TIMES TO THE PRESENT by *Carl L. Cannon* ..... Reviewed by *William B. Stern*	30
CHECK LIST OF NATIONAL REPORTER SYSTEM	32
CHECK LIST OF CURRENT AMERICAN STATE REPORTS, STATUTES AND SESSION LAWS	33
SCHEDULE OF ADVERTISING RATES	E

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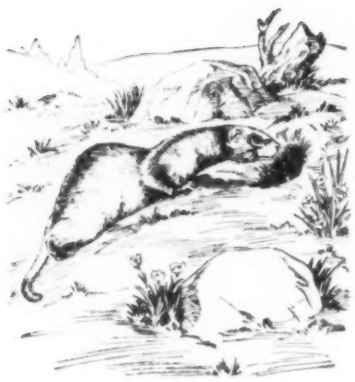

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LAW LIBRARY JOURNAL

VOLUME 35 JANUARY, 1942 NUMBER 1

LAW LIBRARY JOURNAL PUBLISHES LECTURES DELIVERED BEFORE THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

The Committee on LAW LIBRARY JOURNAL presents to its subscribers in this first number of volume 35 of the Journal two of the current lectures given at the Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education. Subsequent numbers of the LAW LIBRARY JOURNAL will carry other lectures delivered during the 1941-42 season in this important series. The Committee on Post-Admission Legal Education has announced the following addresses in addition to those which appear in this issue of the Journal:

October 14—"Wills, Trusts and Estates," by Walter D. Fletcher of Davis, Polk, Wardwell, Gardiner and Reed.

November 18—"Criminal Law," by Martin W. Littleton, former District Attorney of Nassau County.

December 2—"Declaratory Judgments," by John F. X. Finn, member of the Law Revision Commission of the State of New York.

January 14—"Side-lights on the Consideration of an Appeal," by Hon. George H. Taylor, Jr., Justice of the Appellate Division of the N. Y. Supreme Court, Second Department.

February 17—"Taxation," by Roswell Magill, former Under Secretary of the Treasury.

March 10—"Insurance Law," covering insurance trusts, and actions on various types of insurance policies, by Thomas I. Parkinson, President, Equitable Life Assurance Society.

March 24—"Res Judicata," by Bethuel M. Webster, former General Counsel, Federal Radio Commission.

April 7—"Representative Stockholders' Suits and Liability of Directors," by John M. Harlan, of Root, Clark, Buckner and Ballantine.

April 21—"Real Estate," covering mortgages and mortgage rehabilitation, landlord and tenant, and specific performance, by Hamilton C. Rickaby, of Simpson, Thacher and Bartlett.

The lectures of the Association of the Bar have not been published for general distribution since the conclusion of the eight volume set of books entitled *Lectures on Legal Topics*[1] which is on the shelves of the principal law libraries throughout the country. The American Association of Law Libraries, through its official organ, the LAW LIBRARY JOURNAL, welcomes the opportunity of making available these current lectures to the members of the law library and legal professions. Since all leading articles printed in the LAW LIBRARY JOURNAL are indexed in the *Index to Legal Periodicals* these lectures will be indexed under their respective authors and subjects beginning with the 1942 numbers of the *Index to Legal Periodicals*.

[1] v. 1, SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION, AND REGULATION (Macmillan Co. 1917); v. 2, LECTURES ON LEGAL TOPICS, 1920-21 (Macmillan Co. 1924); v. 3, LECTURES ON LEGAL TOPICS, 1921-22 (Macmillan Co. 1926); v. 4, LECTURES ON LEGAL TOPICS, 1922-23 (Macmillan Co. 1928); v. 5, LECTURES ON LEGAL TOPICS, 1923-24 (Macmillan Co. 1928); v. 6, LECTURES ON LEGAL TOPICS, 1924-25 (Macmillan Co. 1929); v. 7, LECTURES ON LEGAL TOPICS, 1925-26 (Macmillan Co. 1929); v. 8, SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION AND REGULATION, 1926-30 SUPPLEMENTARY TO v. 1. (Callaghan & Co. 1931). Editor's note.

THE INFLUENCE OF JUDGE CARDOZO ON THE COMMON LAW*

By Hon. Irving Lehman
Chief Judge of the Court of Appeals of New York

It is not my intention tonight to analyze the decisions of the Court of Appeals or of the Supreme Court of the United States while Judge Cardozo was a member of those courts. Not by such analysis can the influence of Judge Cardozo on the common law be measured. In 1930 Judge Cardozo, then Chief Judge of the Court of Appeals, said, in an address of welcome to members of the English bench and bar who were then visiting the United States: "No strangers these at all but kinsmen of the blood who have kept alive traditions of learning, of honor, of courage, of devotion, that were born long ago when their law was one with ours." Eight years later the Law Quarterly Review in England, referring to these words of Chief Judge Cardozo, commented: "It is because few men have done more than Judge Cardozo to foster these great traditions of the common law that it is fitting that on his death this Review should pay an affectionate tribute to his memory." (54 Law Quarterly Review 492.) It is those traditions which give to the common law its essential quality —indefinable but all pervading.

In opinions notable for their learning, logic and persuasive charm of language, Judge Cardozo has at times reformulated rules of the common law extending or restricting their scope. What was there said and decided has been accepted and followed wherever English speaking judges administer the law in accordance with common law principles. In them the principles underlying the old rule might remain unchanged, but the outworn form of the rule which concealed the principles and impeded their application in new conditions was discarded. In that way Judge Cardozo doubtless exercised a great influence on the development of the common law, but his greatest service, his deepest influence upon the development of common law, lies, I am convinced, not in pointing the way to sound conclusions when analogous questions of law might arise, but in deepening the spirit of the common law —in making judges, legal scholars and members of the bar conscious of their responsibility to preserve the spirit of the common law as the force which must dictate future decisions, if the common law is not to pass away and, with the common law, those inalienable rights of the individual to life, liberty and the pursuit of happiness, which are formulated and vindicated by the common law.

All students of the work of Judge Cardozo agree, I think, that it was during his years upon the Court of Appeals of this state that Judge Cardozo exercised his greatest influence on the common law. I sat with him in that court for more than eight years and our association was peculiarly close. I know that it is for that reason that I have been asked to make the address tonight —and for that reason, too, I was privileged to address the Bar and Officers of

* The first annual Benjamin N. Cardozo lecture delivered October 28, 1941 before The Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education.

the Supreme Court of the United States at the exercises held in his memory. There I said:

> "Those who sat with Judge Cardozo in the Court of Appeals will, I am sure, agree with me that Judge Cardozo made his greatest contribution to the development of the common law, not in his written words—though they will long be read—but in the words spoken in the conference room, heard by few and soon forgotten, yet forgotten only after they had clarified each problem and had served to guide a great court along the road to sound development of the common law. I cannot bring back the spoken word, but I can record here its enduring influence." (Proceedings of U. S. Bar, November 28th, 1938.)

Referring there to the great influence which Judge Cardozo wielded in the conferences of the court, I said:

> "His vast and varied store of learning, his unflagging industry, and his command of the gentle art of persuasion, all contributed to that influence; but far ahead of them I place the integrity of his mind, constraining him always to be on guard against arguments which behind the cloak of logic might conceal a subtle appeal to personal likes or dislikes; his complete absorption in his work; his selflessness, his independence restrained by his respect for the opinion of others, and the wisdom which sprang, I think, from these qualities."

Chief Justice Hughes in the official reports of the Supreme Court of the United States has recorded that in the conferences of that court, too, Justice Cardozo impressed as much by his spiritual qualities as by his learning and acumen:

> "Judge Irving Lehman, of the Court of Appeals of New York, has spoken out of his intimate knowledge of the strong influence exerted by Cardozo as Chief Judge of that court. Judge Lehman referred to his vast store of learning, his unflagging industry and his command of the gentle art of persuasion, but far above those he placed the 'integrity of his mind, his complete absorption in his work, his selflessness, his independence restrained by his respect for the opinion of others.' These qualities were also outstanding in his work in this Court. In conference, while generally reserved and reticent until it was his duty to speak, he then responded with an unsurpassed clearness and precision in statement. His gentleness and self-restraint, his ineffable charm, combined with his alertness and mental strength, made him a unique personality. With us who had the privilege of daily association there will ever abide the precious memory not only of the work of a great jurist but of companionship with a beautiful spirit, an extraordinary combination of grace and power." (305 U. S. p XXVIII.)

I cannot bring back the forgotten words of Judge Cardozo spoken in the conference room and, even if I could, I think I should be unwilling to reveal the words which Judge Cardozo intended should be heard only by those to whom they were addressed. I can do no more than testify to their influence. As Judge Cardozo himself has written: "The spoken word dissolves, but the written one abides." (*Ostrowe* v. *Lee*, 256 N. Y. 36.) By his spoken words Judge Cardozo exercised his greatest influence upon the judges who heard them. It is only by his written words that Judge Cardozo exercised a direct influence upon the development of the common law and will continue to exercise influence in the future. So, even though I have said that I shall not analyze the decisions in which he took part, I must tonight refer to the written words in order to show the nature of the influence of Judge Cardozo upon judges and upon lawyers and legal scholars who have not heard the spoken word, but who cherish and look for guidance to the written word. I do so with hesitation for, as I said in an article which I wrote some years ago—"A student of the printed word can perhaps measure its value more accurately—certainly more objectively—

than one who has joined in discussion of the legal problems and has heard the spoken word before it became fixed in unalterable form." (*Essays Dedicated to Mr. Justice Cardozo*, published jointly by Columbia Law Review, Harvard Law Review, Yale Law Journal, 1939.)

Judge Cardozo's great opinion in *MacPherson* v. *Buick Motor Company* (217 N. Y. 382) was rendered a year after he became a judge of the Court of Appeals. Professor Seavey in his article "Cardozo and the Law of Torts" has pointed out that before that case was decided legal scholars had criticized the rule which, with narrow exceptions, denied redress to a person injured by latent defects in an article purchased at retail, though the defect might have been discovered by a manufacturer exercising vigilance. "Cardozo's logic," said Professor Seavey, "which could not be refuted, and the prestige of the New York Court succeeded where professional criticism had been ineffective." (*Essays Dedicated to Mr. Justice Cardozo*, Columbia Law Review, Harvard Law Review, Yale Law Journal, 1939.) It is interesting to note here that, although the broader rule formulated in that case did not at first receive universal approval either in England or here and fears were expressed about the flood of baseless litigation which might follow from acceptance of the broader rule, yet after the lapse of years it was followed by the House of Lords in the case of *McAlister* v. *Stevenson*, (1932) A. C. 562; where Lord Atkin in his opinion said, "I must not in this long judgment do more than refer to the illuminating judgment of Cardozo, J. in *MacPherson* v. *Buick Motor Co.*, in the New York Court of Appeals, in which he states the principles of the law as I should desire to state them, and reviews the authorities in other states than his own." In a comment on the *McAlister* case, Sir Frederick Pollock pays this tribute to Judge Cardozo: "Another good result is that we are brought into line with the prevailing opinion, as it appears to be, of our learned friends and certainly that of the American learned judge, Cardozo, J., of New York who has succeeded Justice Holmes on the bench of the Supreme Court at Washington." (49 Law Quarterly Review 22.)

Professor Seavey's reference to "Cardozo's logic which could not be refuted" reminds me of a passage in Judge Cardozo's address on "Law and Literature." Referring to the style of the opinions of Chief Justice Marshall he said, "The movement from premise to conclusion is put before the observer as something more impersonal than the working of the individual mind. It is the inevitable progress of an inexorable force. Professor Corwin in an interesting volume, *John Marshall and the Constitution*, shows how even his contemporaries, the bitterest critics of his aggrandizement of federal power, were touched by this illusion. 'All wrong, all wrong,' lamented John Randolph of Roanoke, 'but no man in the United States can tell why or wherein.' (Law and Liberty, p. 11.)

I am far from suggesting that the "logic" of Judge Cardozo's opinion in the *Buick* case, or in any other case, is "All wrong, all wrong" or that the "reason why his logic could not be refuted" is that style served to create an "illusion" of "the inevitable progress of an inexorable force." I do say that the literary style, the carefully wrought form of the opinions, did, at times, convince

where argument alone might not have sufficed. Sometimes, indeed, when at conference I differed with Judge Cardozo and Judge Cardozo would prevail with a majority of the court, and that happened not infrequently—I would say to him jokingly, yet, perhaps, with a touch of asperity, that his command of the gentle art of persuasion led him as well as his associates astray. Then I would quote from his opinion in *Berkey v. Third Avenue Railway*, 244 N. Y. 84, that "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." In truth, every student of the law has recognized that judges who phrase their opinions with artistry have at times persuaded great courts and even themselves, where reason, unadorned, might have pointed to a safer path. Judge Cardozo, too, might have been deluded by his own persuasive powers if he had not possessed in such high degree "integrity of mind" and "respect for the opinion of others."

In the address to which I have already referred, Judge Cardozo suggests that the words of a judge invite facile acquiescence when "we seem to be let into the mysteries of the conference, the sacrosanct 'arcana' to quote Professor Powell's phrase, 'to which the uninitiated are not admitted.'" I shall make use of that suggestion and I shall admit you tonight to a conference of the Court of Appeals shortly before Judge Cardozo left that court. The question under discussion concerned the interpretation and scope of a statute intended to wipe out hampering technicalities in ancient procedure. That required a careful study of the historical background of the statute. It is the practice of the Court of Appeals to confer on most cases promptly after they have been argued, though at that time the discussions may often proceed no further than the point where it becomes evident that more careful study is required for the determination of the questions involved. In the case to which I have referred, Judge Cardozo stated his conclusions tentatively and added that he would study the question more carefully during the recess and would then circulate an opinion or written report based on his further study. No other judge was ready to express at that time a definite opinion, but all, except myself, agreed, at least tentatively, with Judge Cardozo. I was inclined to disagree with Judge Cardozo but said that before reaching a definite conclusion I would await Judge Cardozo's opinion or written report, which I was sure would make further research by any other judge superfluous.

I received the opinion which Judge Cardozo wrote and in learning and persuasive power it fully met my expectations. I marked my concurrence without independent study or further thought, but, in accordance with my usual practice, a day or two before the court was to meet again I read a second time all the opinions and reports which I had received during the recess, and then at the last moment I seemed to see flaws in the reasoning. I suggested to Judge Cardozo that further discussion of the case by the court should be postponed until after I had time to write out and submit to him the views which I had formed so tardily. That was done, and with characteristic respect for the opinion of others, Judge Cardozo reconsidered the question, adopted my views, and promptly circulated a new report so stat-

ing. The point of my story lies, I think, in a remark which Judge Cardozo then made to me, which is no less true because it was made in jest. "I hope," he said, "you will recognize my generosity in giving up my own views for I am confident that I could have held the majority if I had not changed." Of that I am quite as confident as he.

I am going to tell another story which perhaps illustrates even better Judge Cardozo's integrity of mind, respect for the opinions of others, and the persuasiveness of his style. In my early days in the Court of Appeals both Judge Cardozo and I were deeply troubled by the fact that in many cases of murder in the first degree, the People produced confessions which the accused claimed had been obtained by beatings and torture and which, it was admitted, had been obtained after the accused had been questioned for many hours without opportunity to consult counsel, while he was held in the police station in violation of his right to be arraigned promptly. Then, in 1931, came the case of *People v. Mummiani*, 258 N. Y. 394. In that case it was not disputed that the accused was unlawfully detained in the police station for thirty-six hours and he was arraigned only after a confession had been obtained. He claimed promptly that the confession was due to unmerciful beating. The police denied the beating, but their denial seemed perfunctory. Some circumstances lent force to the claim of the accused that he was beaten; other circumstances indicated that the story of the beating might be a fabrication. There was evidence within the confessions that they were true even though they might have been made under the influence of fear produced by threats. A majority, at least, of the judges agreed in the conference that the police should receive a sharp admonition that the statutory mandate that a person under arrest shall be promptly arraigned must be obeyed. Yet, since a jury could reasonably reject the defendant's claim that he was beaten while unlawfully detained at the police station, Judge Cardozo and a majority of the court concluded that the judgment of conviction should not be reversed. In the opinion which Judge Cardozo wrote he put in burning words his intense indignation at the unlawful detention of the defendant. In an opinion which I intended as a dissent I used his burning words to justify my own conclusion that a new trial should be ordered in order to afford opportunity for a more adequate examination of the defendant's claim that he had been beaten while unlawfully detained. Judge Cardozo, after careful consideration of what I wrote, decided to vote with me for a new trial. I asked him not to withdraw his opinion, but merely to change the conclusion. He was always averse to writing an opinion based on arguments which had first been urged by another judge, and he insisted that I must write the opinion. I told him that I would never write an opinion when I had one at hand which was much better than any I could write, and that without any conscientious scruples I would take his opinion, substitute my name for his at the beginning, and add some pages at the end stating why a new trial should be ordered. The point of my story is that no other opinion which bears my name is, I think, quoted as frequently and I have no doubt that what Judge Cardozo wrote and I adopted has been a potent force in discrediting what I have

called the lawless enforcement of the law.

I have told this story with no sense of either personal pride or personal modesty; some may say that my conscience has become atrophied because I exercise it so little, for I must admit that my conscience remains untroubled when I receive credit for my fine opinion though I did not write the best parts. I have told the story only because I think it illustrates both the nature of the influence of Judge Cardozo on the common law and the reason for that influence. He had a passion for justice and he knew that justice can be attained only where those responsible for the enforcement of the law obey the mandates of the law and where courts which administer the law will sanction no abuse of the law. Where there was wrong, he could express his sense of outrage in stirring words, but his indignation is always restrained by reason. He could not accept lightly a conclusion that the law ordains a result which conscience rejects, but recognizing the intensity of his own feelings he was always on guard lest he measure justice by his personal standards of what is right rather than by those general standards by which, in accordance with law, the conduct of all must be measured.

In the article from which I have already quoted, Professor Seavey points out that:

> "With his power of understanding principles behind the rules and of expressing them in striking and unforgettable terms, he has become as truly a teacher of the lawyers of the future as are the instructors in the schools. * * * Principles, distorted by judicial errors or clouded by the overuse of fictions, are made manifest. Because he is picturing human problems and not merely manipulating legal formulae, the reading of his opinions is an intellectual adventure. Seldom does he evade logical difficulties; his work has a nicety of balance which by and large compels conviction, both to the professors whose tendency is to seek new rules and to create new interests and to the practicing lawyers who ordinarily dislike both new wine and old wine served in new bottles."

He often said to me that though, in every case which presents a difficult choice of rules of law, he goes through intense mental and spiritual travail, yet he realizes that the world would be little better or worse if every case that had come before our court during the last fifty years had been decided differently. Other Judges have looked upon their work with similar doubt of its permanent importance. I know that there is some foundation for such doubts. The rule announced, in any particular case, may have slight permanent effect. Mistaken choice of a legal rule in a particular case can usually be changed by the Legislature, or in some cases even by the courts when later realization comes that the rule chosen produced an unfortunate and perhaps unforeseen result. To that extent, then, choice of the rule to be followed may, in any particular case, have little permanent importance. But the ideals and traditions of the common law developed in the course of centuries, cherished by generation after generation of liberty-loving lawyers, and enforced by generation after generation of liberty-loving judges, is of incalculable importance. Each decision conceived by a judge in ignorance or perversity or arrogance of spirit weakens the force of the ideals and traditions of the common law and no one may belittle the importance of that.

In "Essays Dedicated to Mr. Justice Cardozo," published jointly by the Co-

lumbia Law Review, the Harvard Law Review, and the Yale Law Journal, Professor Seavey, in the article from which I have heretofore cited, analyzes Cardozo's influence on the law of torts; Professor Arthur L. Corbin analyzes Judge Cardozo's influence on the law of contracts; and Professor, now Justice, Felix Frankfurter has analyzed Cardozo's influence on public law. They show how in each of these branches of the law he has made clear the principles behind rules and has expressed these principles in form which lawyers and judges could not fail to accept and follow. Such phrases as "rights and duties in systems of living law are not built on such quicksands" (*Hynes* v. *N. Y. C. R. R. Co.*, 231 N. Y. 229); "the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty" (*Palsgraf* v. *Long Island R. R. Co.*, 248 N. Y. 339), are quoted every day by lawyers arguing in our court. They are quoted so often, indeed, by lawyers that they have come to seem almost platitudinous. Yet, I find that in the conferences of the court they are quoted scarcely less often and there they are seen as helpful guides to sound decisions. I shall not multiply the instances where metaphors framed by Judge Cardozo in truth "liberate thought." It seems to me, however, that far more important than the opinions in which Judge Cardozo has demonstrated his clarity of mind and has removed from principles of eternal verity the incrustations which time has built around them, are those opinions in which Judge Cardozo has expressed the ideals which should guide judges in formulating common law standards and rules of conduct. I shall refer to only one such case, *Meinhard* v. *Salmon*, (249 N. Y. 458). The court there divided four to three and I hesitated long whether I would agree with the opinion of Judge Cardozo or the opinion of Judge Andrews. Even now I do not know which conclusion is right. I do know that few words contained in any judicial opinion have had a greater or more salutary effect that the words in Judge Cardozo's opinion: "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate."

In his great series of lectures, "The Nature of the Judicial Process" and "The Growth of the Law," and "Paradoxes of Legal Science," Judge Cardozo has made judges and lawyers conscious as they have never been before of the manner in which the common law grows and develops by judicial decision. The influence on judicial decision of what he there said has been recognized not only here but abroad. In the words which Judge Cardozo spoke in conferences, he has exercised a great influence upon the decisions of two great courts. To his influence in the Court of Appeals I have testified tonight and on other occasions. Though all who sat in that great court with Judge Cardozo have felt his influence, it is fair to point out that Judge Cardozo did not dominate that court and, even as Chief Judge, he did not try to dominate it. Often he was compelled to dissent either alone or with other judges. Indeed, he gloried in the fact that the court could be dominated by no man. He recognized that in a

great court each judge should be independent, yet listen with respect and with open mind to the views of others. In my long judicial career I have known and been associated with other judges of learning, power, and devotion. I have known none who was as willing to give consideration and weight to the views of other judges as Judge Cardozo.

Judge Learned Hand has said of him:

"* * *; his gentle nature had in it no acquisitiveness; he did not use himself as a measure of value; the secret of his humor—a precious gift that he did not wear upon his sleeve—lay in his ability to get outside of himself, and look back. Yet from this self-effacement came a power greater than the power of him who ruleth a city. He was wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill-will. I believe that it was this purity that chiefly made him the judge we so much revere; more than his learning, his acuteness, and his fabulous industry."

To that tribute, so true, I can, perhaps, add nothing and yet tonight I feel impelled to say this one thing because I believe that no other has as much right to say it. Judge Cardozo, born a Jew and brought up in an orthodox Jewish home, in his manhood felt the power of religious ideals though he did not join in formal religious worship or accept some of the dogmas of the religion of his fathers. Deep in his heart he recognized that all the life of the individual, all freedom, indeed all that is worth living for, is based upon the two commandments of the law, "Thou shalt love the Lord thy God" and "Thou shalt love thy neighbor as thyself."

Archbishop Spellman, in an address made last September, pointed out:

"The spirit of the Declaration of Independence recognizes that all power, with its responsibilities comes from God and this spirit is in precise consistency with Christian teaching on the Divine origin and authority, and on the sacred rights of the family and the individual.

"These parallel ideas and parallel ideals have come down through our history and never more clearly or forcefully were they expressed than by President Roosevelt in his message on 'Our Freedoms'; 'Storms from abroad,' the President said, 'directly challenge three institutions indispensable to Americans now as always. The first is religion. It is the source of the other two—democracy and international good faith.' And I might add, of national salvation. Religion is not merely a word. The test of its reality is in its practice."

Judge Cardozo's concept of the God whom he was commanded to love may have differed from the traditional concept of the God of his fathers, but he obeyed with whole heart the commandment that he must love the source from which all that is divine in man has sprung, and the command to love his neighbor was part of his nature. To his ancestors in Palestine these commands had been not merely moral precepts, but part of the law where violation carried penal consequences. To him they were the basis of our institutions; the foundations of the common law. They represented for him those traditions and ideals, inherent in the common law and without which no law, no freedom, no individual happiness can long survive. In the address which I made at the memorial meeting of the members of the Bar of the Supreme Court shortly after Judge Cardozo's death, I said:

"His ancestors were driven from their homes in the Spanish peninsula more than four hundred years ago because they would not yield conscience and principle to force and abandon the faith of their fathers. In Colonial days they found a home here, and many of them gave to this country the service which only men, steadfast in principle and guided by conscience can give. The same spirit which impelled his ancestors to hold fast to their principles, though it made them homeless outcasts, animated

Justice Cardozo. He could not compromise where principle was involved. He could not abandon his standards of right; he could not reject what he believed to be true. He loved America with a surpassing love because he believed that her institutions are founded upon the divine commands that men shall love their neighbor and their God; commands first given to his fathers in Palestine and centuries later proclaimed in Palestine for all the world to hear by Him who for almost two thousand years has guided the world along the ways of love. Justice Cardozo believed that our constitution is the bulwark of freedom of action and speech and conscience without which life is not worth living. To the preservation of that constitution he consecrated his every thought."

Those words I repeat tonight for I think in those words lies the explanation of the influence which this lovable, modest, unassuming judge exercised on the development of the common law, which gave to him "a power greater than the power of him who ruleth a city."

Statesman, prelate and judge; Protestant, Catholic and Jew are united in the conviction that the inalienable rights of the individual, formulated and assured by our law, rest upon a foundation eternal and immutable because it is divine. There lies America's unity.

LAW SCHOOL ASSOCIATION ADOPTS EMERGENCY RESOLUTIONS

The Association of American Law Schools at its 39th Annual Meeting held at the Edgewater Beach Hotel, Chicago, December 29 and 30, adopted four emergency resolutions including Emergency Resolution Number 3 which reads as follows:

"Resolved, that the Executive Committee is authorized and empowered during the present emergency on application by a member school to suspend the operation as to the school of the standards of membership prescribed in Article Sixth, Sections 6 and 7 of the Articles, to the extent the Committee determines the action is necessary in the particular case and is consistent with the interests of legal education."

The text of Article Sixth, Section 6, which is printed in full at page 285 of the *1940 Handbook of the A.A.L.S.*, reads in part:

"* * * commencing September 1, 1940, it shall have, in addition to the four instructors specified in Section 7 of this Article, a qualified librarian, whose principal activities are devoted to the development and maintenance of an effective library service."

"Commencing September 1, 1932, for additions to the library in the way of continuations and otherwise, there shall be spent over any period of five years at least $10,000.00, of which at least $1,500.00 shall be expended each year * * *"

The Joint Committee on Cooperation Between the A.A.L.S. and the A.A.L.L., under the chairmanship of William R. Roalfe, law librarian of Duke University, is studying the problems incident to a relaxation of library requirements through the application of Emergency Resolution Number 3. A statement of general policy to be formulated by the Committee will be published in the March number of the LAW LIBRARY JOURNAL.

THE FEDERAL ANTI-TRUST LAW*

By Thomas D. Thacher
Former Solicitor General of the United States
Former United States District Judge

More than fifty years ago the Sherman Anti-Trust Act took its place upon the statute books as a great remedial enactment designed to free commerce among the states and with foreign countries from monopolies, attempts to monopolize, and restraints of trade prejudicial to the public interest.

The language of the act is simple. Its generality is striking.

> Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is declared to be illegal.
>
> Section 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty, etc.

The Chief Justice, in the Appalachian Coals case (288 U. S., 344, 1932), said:

> As a charter of freedom the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions which might either work injury to legitimate enterprise or through particularization defeat its purpose by providing loopholes for escape. The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness.

Needless to say, uncertainty in the application of such a standard is inherent in the infinitely variable conditions and economic factors affecting individual industries, trades, professions and every commercial activity. After fifty years the prohibitions of the act are without precise definition to be found either in the statute itself or in the growing body of case law which it has engendered.

But it may at least be said with some assurance that certain restraints resting upon agreement between competitors are now recognized in the decisions as illegal per se:

> (1) Agreements fixing or stabilizing prices.
>
> (2) Agreements limiting production.
>
> (3) Agreements dividing the market territorially or by percentages.
>
> (4) Agreements between buyer and seller controlling resale prices.
>
> (5) Agreements restricting the liberty of others to engage in trade.

But even such agreements may not always be characterized as illegal. If patents or copyrights are involved, agreements and covenants made between licensors and licensees reasonably designed to protect the reward of the licensor or the licensee in the exercise of the statutory monopoly are not unlawful. So, also, agreements for the sale of a business, trade or profession may exclude the vendor from competition with the vendee if reasonably necessary to protect the value of the business sold.

Agreements fixing minimum resale prices for commodities bearing the trade mark, brand or name of the producer or distributor are valid under circum-

* A lecture delivered November 12, 1941 before The Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education.

stances set forth in two proviso clauses added by the Amendment of 1937.

But the specification of these few agreements as illegal per se leaves unexplored a vast territory in which the statute has application.

In the time at my disposal one cannot attempt to discern or to locate the paths to decision in this land of doubt and uncertainty. All one can hope to accomplish in such a brief exploration is to have a view of some of the headlands—which themselves may turn out to be but clouds on the horizon.

Many industries, when consumptive demand has fallen sharply, or when productive capacity has expanded too rapidly, have been afflicted with ruinous competition, resulting in selling below cost and other economic disorders destructive of the industry itself. Such distress conditions are opposed to the public interest, which the statute is designed to serve.

In such situations it is natural that the members of the industry should seek lawful means, through co-operative efforts, to cure the ills of sick business.

Such problems are not simple, and if you are called upon to advise your business clients upon the legality of such co-operative efforts you will need not only to be wise in the law but to have a full understanding of the business in which your client is engaged, so that you can appraise the purpose and the effect of what is proposed to be done.

It would serve to confuse, rather than to clarify, to attempt to review all of the decisions bearing upon such problems. The problems themselves are of such infinite variety that the decisions cannot be accepted as establishing absolute rules. We can learn from them only the method of approach and the principles to be applied in dealing with any new problem which may arise.

And to this end I should like to compare with you four of the more recent decisions of the Supreme Court of the United States, in the hope that we may deduce from them guides for the solution of similar problems which may confront us in our practice.

These decisions are found in Appalachian Coals, Inc., v. United States (288 U. S., 344, 1933); the Sugar Institute case (297 U. S., 553, 1936); United States v. Socony-Vacuum Oil Co. (310 U. S., 150, 1940) and the Apex Hosiery case (310 U. S., 469, 1940).

Before comparing these decisions, let me put to you certain propositions which, I venture to say, are predicated upon sound legal principles applicable in any such situation:

The unfortunate state of an industry will not justify attempt by concerted action unduly to restrain competition or to monopolize trade.

The admirable purpose to restore health to industry is no excuse for imposing illegal restraints upon those engaged in it.

The mere elimination of competition is not however enough to characterize the measures taken as unlawful and concerted action which does not impose illegal restraints is lawful. On the other hand agreements fixing or stabilizing prices so as to dominate or control the market are illegal.

You may well declare in disgust that this is so shadowy a line as to be of little practical use. I assure you that the line of decision is no less shadowy. But

perhaps if we hang on to these rather vague generalities we may find a basis for rational judgment in the facts of individual cases.

In the Appalachian coals case a number of producing companies operating in a local field where distress conditions prevailed created a selling agency for their coal, which was to classify and sell the coal at the best prices obtainable in a market where the coal was offered for sale in competition with other producers.

This selling agency, if unable to sell all of the coal, was required to apportion orders upon an agreed basis, and, save for certain exceptions, was to determine the price at which sales would be made without consultation with its principals.

The court concluded that, so far as the actual purpose was concerned, the defendant producers were engaged in a "fair and open endeavor to aid the industry in a measurable recovery from its plight."

And it observed that the plan did not either contemplate or involve "the fixing of prices"; that defendants would not be able to fix the price of coal in the consuming markets; that their coal would continue to be subject to "active competition."

To the contention that the plan would have a tendency to stabilize market prices and to raise them to a higher level the court replied (pp. 374, 375):

> The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that co-operative endeavor to correct them necessarily constitutes an unreasonable restraint of trade. * * *
>
> In the instant case there is, as we have seen, no intent or power to fix prices, abundant competitive opportunities will exist in all markets where defendants' coal is sold, and nothing has been shown to warrant the conclusion that defendants' plan will have an injurious effect upon competition in these markets.

In the Socony-Vacuum case the major oil companies combined to purchase distress gasoline from independent refining companies who, having no storage facilities, were compelled to sell their products in the spot market at prices below the cost of production. Under extensive buying programs each major company purchased large quantities of such distress gasoline from particular independents assigned to them pursuant to a plan agreed upon by the major companies.

In 1935 these companies sold 83 per cent. of all gasoline sold in the Midwestern area. Each had extensive sales organizations selling to the retail and the jobbers' markets. Retail and jobbers' prices were based on spot market prices, which were raised by their purchases at fair-going market prices recommended by a committee representing the major companies.

The purpose and effect of these operations was to stabilize the wholesale, jobbers' and retail prices by raising the prices in the spot market from a ruinous distress basis. This the buying programs were intended to accomplish through the co-operative activities of the dominant competitive companies in the market, and the purpose of the plan was in fact accomplished. Because of the purpose and effect of the plan it was held to be unlawful.

In the Sugar Institute case concerted action was taken through a trade association to secure adherence without deviation to prices and terms publicly announced by individual producers.

Although each company was free to announce new price schedules at any time, adherence to prices previously announced eliminated all opportunity for price variations in the course of competitive negotiations, however fair and appropriate such variations might be in the individual case. This restraint was held to be illegal.

From these recent decisions the rule is deducible that co-operative efforts which may have a stabilizing influence on the market are not necessarily illegal —but are illegal if they result in price control or market domination.

The same principle is illustrated by the Trade Association cases. In such cases it has been held that:

The intelligent conduct of commerce through the acquisition of all relevant facts may properly be sought by the co-operation of those engaged in trade, although stabilization of trade and more reasonable prices may be the result.

But when such an association is used to fix or maintain the prices of its members, or to unduly restrain their competitive freedom in market transactions, then the association and its members will be held to have violated the statute.

The integration of partnerships and corporations in the interest of economy and business efficiency, and for the promotion of commerce, is a recurrent illustration of reasonable and lawful restraint upon competition between individuals, but which does not dominate or control the market for commodities moving in interstate commerce.

We now come to the Apex Hosiery Company case—the most recent decision of those to which I have referred —which seems to me the most important decision under the Anti-Trust Laws of recent times:

In this case it was established that the defendants, who were members of a labor union, engaged in a "sit-down strike" in its most aggravated form. When the union demanded a closed shop agreement, and on its refusal declared a strike, only eight of the company's 2,500 employees were members of the union.

The company's plant was seized and held for several weeks. Its machinery and equipment were "wantonly demolished or damaged" to the extent of many thousand dollars. There was stoppage of production of goods intended for delivery in interstate commerce, and, beyond this, there was also a deliberate prevention of the shipment of finished goods to customers outside the state.

This was due not merely to the occupation of the plant, but to the repeated and explicit refusals of the defendants to allow the removal of such goods from the premises for interstate shipment. The value of finished goods in the factory was $800,000, of which 80 per cent., as defendants knew, was ready for shipment in interstate commerce.

The court held that these circumstances constituted a deliberate restraint upon interstate commerce, but that the restraint was not prohibited by the Sherman Act.

The Chief Justice, in a strong dissent, said of this decision:

> Whatever vistas of new uncertainties in the application of the Sherman Act the present decision may open, it seems to be definitely determined that a conspiracy of workers, or, for that matter, of others, to obstruct or prevent the shipment or delivery of goods in interstate commerce to fill orders of a manufacturer or a dealer is not a violation of the Sherman Act. With that conclusion I cannot agree.

From the legislative history of the act, the particular evils at which the legislation was aimed, and from the course of judicial decisions, the court—fifty years after the enactment of the law—interpreted it as not intended to have, and therefore as not having, application to the direct interference with shipments in interstate commerce—and in so limiting the interpretation of the act defined the form of restraint which is the sine qua non of condemnation under the act.

The court's conclusion with reference to the proper interpretation of the act is as follows:

> In the cases considered by this court since the Standard Oil case in 1911 some form of restraint of commercial competition has been the sine qua non to the condemnation of contracts, combinations or conspiracies under the Sherman Act, and in general restraints upon competition have been condemned only when their purpose or effect was to raise or fix the market price. It is in this sense that it is said that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices. Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.

Since the combination or conspiracy did not have as its purpose restraint upon competition in the market for petitioner's product, and so far as appeared the delay in shipments did not have, and was not intended to have, any effect on prices of hosiery in the market, the combination or conspiracy was not prohibited by the Sherman Act any more than the restriction upon competition and the course of trade held lawful in the Appalachian Coals v. United States, because, notwithstanding its effect upon the marketing of the coal, it nevertheless was not intended to and did not affect market price.

This ruling may well be a landmark on the long course of judicial interpretation of the Sherman Act. It is not to be narrowly applied to labor cases. It declares the meaning of the statute in its application to all cases, as the Chief Justice indicated in his dissenting opinion.

Since the critical factor is not restraint of competition, but the intended or actual effect of the restraint upon market conditions or upon advantages derived by purchasers or consumers from free competition, the scope of inquiry must include the economic factors affecting prices.

Uniformity or rigidity of price may result from agreement, but may also be the inevitable result, even in a freely competitive market, of the operation of economic factors. These factors are constantly variable. They vary in every situation, from time to time, and different markets are affected by them in different ways. The evaluation of their effect is essentially an economic problem which cannot be resolved by a priori assumption.

Each case depends upon the impact of economic factors upon the market for commodities moving in interstate commerce, and, as stated by the Chief Justice in the Appalachian Coals case:

> Close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment.

The scope of inquiry is as broad as the heavens. The court must ordinarily

consider the facts peculiar to the business to which the restraint is applied. Its condition before and after the restraint was imposed, the nature of the restraint and its effect, actual or probable, the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or aim to be attained, are all relevant facts (Chicago Board of Trade v. United States, 246 U. S., 231, 238, 1918).

It is necessary to consider the economic conditions peculiar to the industry, the practices which have obtained, the nature of the plan upon which the defendants have agreed, the reasons which led to its adoption, and the probable consequences of the carrying out of the plan in relation to market prices and other matters affecting the market for the sale of products in interstate commerce (Appalachian Coals v. United States, 288 U. S., 344, 361).

The relative position of the defendants who join in a plan with relation to others in the same industry is, of course, important, for if they supply a large percentage of the product consumed the maintenance of fair competition between themselves in the sale of these products may be a very serious public concern in its effect upon prices.

If the product is a thoroughly standardized commodity there may be a very strong tendency to uniformity of price without agreement, and the public may be little concerned with the brand or source of the product. In such situations, however, it is of much importance that such opportunities as may exist for fair competition should not be impaired (Sugar Institute case, 297 U. S., 553, 600).

In the Cement case (268 U. S., 588, 1925) the government sought to predicate a finding of agreement to maintain prices upon uniformity of price. There, of course, as in the Sugar Institute case, the product was a thoroughly standardized commodity, and expert economists were called to rebut the inference of agreement from uniformity of price.

In that case the court said:

> A great volume of testimony was given by distinguished economists in support of the thesis that, in the case of a standardized product sold wholesale to fully informed professional buyers, as were the dealers in cement, uniformity of price will inevitably result from active, free and unrestrained competition * * *.

And further said:

> We realize, also, that uniformity of price may be the result of agreement or understanding, and that an artificial price level not related to the supply and demand of a given commodity may be evidence from which such agreement or understanding, or some concerted action of sellers operating to restrain commerce, may be inferred.

In concluding, the court said:

> This record wholly fails to establish, either directly or by inference, any concerted action other than that involved in the gathering and dissemination of pertinent information with respect to the sale and distribution of cement to which we have referred; and it fails to show any effect on price and production except such as would naturally flow from the dissemination of that information in the trade and its natural influence on individual action.

This ruling is particularly important at the present time.

In many situations the Department of Justice attempts to base its prosecutions upon inference of agreement predicated on uniformity of action taken by competitors. The defense in such cases is

under the necessity of showing that such uniformity results from economic factors influencing the individual action of competitors, and not from any agreement between them.

This was the real question in Interstate Circuit et al. v. United States (306 U. S., 208, 1939), where the District Court and a majority of the Supreme Court justices sustained the inference of agreement predicated upon uniformity of action. The case was lost, notwithstanding that the action taken by each individual was dictated by strong motives of business advantage, and, so far as the proof disclosed, was not controlled by previous agreement.

The importance of the correct analysis and appraisal of economic factors in explanation of uniformity and rigidity of price was well illustrated by a recent investigation of the sulphur industry by the Department of Justice.

Elemental sulphur is found in large deposits in salt domes in Louisiana and Texas, near the Gulf of Mexico. Commercial recovery of this material was made possible by a patented process originally controlled by the Union Gulf Sulphur Company, a pioneer in this industry. Its deposits were limited, and after most successful operations were exhausted a number of years ago.

Before this, however, two large companies, having acquired fresh deposits by discovery, entered the field after the expiration of the patent. They have large reserves to-day. Two small companies are their only competitors.

The process is far more economical than any other methods of producing pure sulphur. There is, however, potential competition which prevents the rise of price of Texas sulphur above the level upon which competing processes could be operated at a profit.

For many years there has been uniformity and rigidity of price in this industry which has not fluctuated with other prices during periods of inflation or depression.

Upon the face of this picture it was very simple for economists appearing before the T. N. E. C. to analyze the rigidity and uniformity of price over the years, and to emphatically express their conclusion that this was evidence of collusion and of one of the worst monopolies in the United States.

These hearings led to an investigation by the Department of Justice, and to an exhaustive analysis of the economic factors influencing the stagnation of prices. There were many.

In the first place, the cost to the consumer was so low that any fluctuations would not substantially affect the cost of the products in the manufacture of which sulphur is consumed—it being exclusively a raw material used with more costly materials for the manufacture of other products.

Consequently, lowering the price of sulphur could not affect the consumptive demand because the cost of sulphur as a component cost of the consumable commodities was relatively too small to influence the price of any such product.

A second factor was that from the beginning sulphur had been sold under long-term contracts, and while the producer of sulphur was committed to the contract price, and could change the price only upon the expiration of each individual contract, if the price were lowered each of the contractors would expect to be protected by an adjustment

of existing contracts before their expiration.

Thus, it being clear that price reductions would not increase consumers' demand, there was no advantage in price-cutting, and the best policy was to continue supplying the demands of customers so long as the reserves permitted. Nor was there any necessity for quick sales.

In striking contrast with the situation we saw in the Socony-Vacuum case, sulphur produced by the patented process in question is stored on the ground, without storage cost, and is ready for shipment whenever required. Couple this with the fact that all supplies are limited, and the apprehension of suffering the fate of the pioneer company in the exhaustion of reserves, it must have been obvious that to reduce prices and engage in vigorous price competition was contrary to the individual interests of the producing companies. There was complete denial of any agreement upon prices, and exhaustive examination of the company's files disclosed no evidence of any such agreement.

There were many other economic factors which were analyzed by economists in the Department of Justice and in the employ of the companies, which I will not take time to review. Suffice it to say that as a result of these studies of the economic factors controlling market conditions in this industry, Mr. Thurman Arnold publicly announced that proceedings against the companies were not presently warranted.

One other problem of the same kind may be mentioned. A number of years ago all of the directors of the New York, New Haven and Hartford Railroad were indicted for a conspiracy to monopolize, and for having monopolized, the transportation facilities in New England. The extent of the acquisitions not only of railroads, but of steamboats and trolley systems, and the methods by which these acquisitions were made formed the basis for a very strong case against the directors, or some of them.

The history and growth of the railroads of New England disclosed an interesting relationship between the facilities local to New England and the great trunk lines leading across the continent from the borders of New England. This history disclosed constant efforts on the part of several of these trunk lines to acquire and control for themselves one or another of the New England roads.

Because of its geographical and industrial relation to the rest of the United States, New England had been granted a differential in freight rates on the transcontinental trunk systems.

Relating the long history of this struggle to the public service, it was easy to demonstrate that if all the lines in New England were consolidated every shipper in that territory could choose, in routing his freight, over which trunk line he desired to ship. Those from whom he purchased raw materials could also choose from all the trunk lines.

The consolidation of the New England rail lines immediately brought every transcontinental carrier touching the periphery of New England into competition with every other transcontinental carrier for the business of every person shipping out of or into the New England territory. Upon this thesis local consolidation increased competition. And so it was possible in

that case to argue, with some effect, that the case should be disposed of as was the St. Louis Terminal case, where a terminal serving all of the railroads entering into St. Louis was held to be lawful under the Sherman Act, provided equal facilities were afforded to all connecting carriers upon equal terms.

The evidence was received, and Judge Hunt in charging the jury directed them to take these facts into consideration in determining whether or not what was done was reasonable in the interest of shippers or was an unreasonable monopoly and restraint of trade.

I mention this instance merely to emphasize again that in every case arising under the Sherman Act there are no absolute rules—there are no preconceived suppositions—upon which any case can necessarily be disposed of. The fascinating and challenging task of counsel transcends the problems of an ordinary case. It requires understanding and evaluation of economic factors and business considerations which in many cases must control decision.

IMPROVING THE INDEX TO LEGAL PERIODICALS—HOW WOULD YOU DO IT?

By B. B. Druker
Law Librarian, Iowa State Law Library, Des Moines, Iowa

John Henry Wigmore, in the recently published third edition of his monumental treatise on Evidence, states (Vol. I, Sec. 8a, p. 243):

> "For years past there have been at the service of the profession more than a score of legal periodicals publishing the weightiest critiques of current legal problems. There is little in judicial opinion to show that these articles have ever been read; apparently their great labor and helpful thought have been wasted on the judge."

Happily, a footnote indicates that the foregoing indictment was first published in 1914, in the second supplement to the first edition of Dean Wigmore's work, but aside from that there is nothing to indicate that there has been any improvement in the situation during the last quarter of a century. Law librarians know that such is not the case; on the contrary, they are aware that there has been a gradually increasing use of legal periodical literature, both by bench and bar, during recent years. They know, further, that law reviews are resorted to more and more in those libraries whose staff members are constantly on the alert to point out their value to patrons and to assist them in their use of this type of research material.

Of course there is still a great deal of room for improvement. Many judges and lawyers continue to view with cold disdain the legal conclusions of mere student writers, but this prejudice, they must be told, should not be permitted to blind them to the obvious advantages of the large amount of research done upon which those conclusions are based. Nor should a dislike for student opinions carry over against those law review articles written by acknowledged leaders in their fields. Such essays are valuable not alone for their analyses of estab-

lished legal principles but as well for their discussions of progressive developments in legal science.

Fullest use of periodical literature, as of any other legal research material, depends on adequate indexing. This is a problem which is in continuous solution by the Committee on the *Index to Legal Periodicals*, but there is, in addition, the projected task of re-editing the first ten volumes of the Index and of cumulating the first eighteen volumes. A report of a special committee on the nature of this undertaking was presented at the 1941 Annual Meeting of the American Association of Law Libraries and is published in Vol. 34 LAW LIBRARY JOURNAL at page 176 (September, 1941).

Although the plan for re-editing and cumulating is still in an incipient stage, the Executive Committee, at its mid-winter meeting in Chicago, Illinois, Dec. 29-31, 1941, felt that now was the time to begin consideration of the manner in which this important work would be done and of the form in which it would be prepared. Broadening the inquiry further, the Executive Committee is desirous of making current issues of the *Index to Legal Periodicals* of even greater service to law librarians and to the bench and bar if such is possible. To achieve this purpose, the Committee decided to go directly to law librarians and other users of the Index for constructive criticism of both form and content of the present Index. One suggestion for improvement which occurs, and which undoubtedly has been in the minds of many others, concerns the present Author Index section which, it seems, could be made much more helpful by including the name and citation of each article written by the authors listed, or at least by indicating the page of the Index on which the name and citation of the author's article appears. At present only the subject heading under which the article falls is listed and too often one must search at great length before finally ferreting out the desired reference.

There are probably many other ideas for improvement of the Index in the minds of most of its users. It is the desire of the Executive Committee that these ideas have expression, and to this end it is asked that every law librarian, or other individual, with a thought on the subject communicate it directly to the present writer, to Helen G. Ross, Librarian, Duluth Bar Library Association, Duluth, Minn., or to Helen Newman, Secretary-Treasurer, American Association of Law Libraries, The George Washington University Law Library, Washington, D. C. There is no prize offered for the best letter contributed but it is hoped that the sum total of all replies received will help to produce an even more serviceable *Index to Legal Periodicals*, so that the final result will itself prove a benefit to all concerned.

Poland's Financial Plan

Poland, Plan of Financial Stabilization, 1927: Documents Relating to the Realization of the Plan of Stabilization, a volume compiled in 1928 by John Foster Dulles, legal adviser to the Polish Plan of Financial Stabilization, and senior member of the law firm of Sullivan & Cromwell, will be sent to libraries upon request made to Mrs. Lotus M. Mills, law librarian of the firm, 48 Wall Street, New York City.

SAVING TIME IN RECORDING STATUTES AND SESSION LAWS*

By Raymond C. Lindquist
Librarian, New York Law Institute

Even before the days of all-out war effort many librarians had to face the problem of weighing and simplifying their routines if they were to get all their work done.

One of the most time-consuming routines is cataloging. Over a period of years library workers have evolved a card catalog as the most satisfactory way of making records which will reveal quickly and accurately the resources of a library, providing both a subject approach and an author approach.

Standard practice requires cards in the catalog to represent all books in the collection. In the case of treatises cards can be prepared and, once they are filed in the catalog, they are generally there for the life of the book (if not longer!). Continuations, sets which build up by adding volumes in a series, present a different problem. Rather than adding a separate card for each volume of a continuing set of volumes a single card is used to represent an entire set, with a device called "open entries" to provide for the addition of new volumes. Instead of recording by typewriter the number of the last volume of the title available in the library, the number is written in pencil. This can be changed easily as more volumes are added.

The most striking characteristic of a law library is that most of its books are usually those which are issued in series, reports, session laws, and periodicals. All of these require "open entry" cards in the catalog. Every time a volume of state reports is added, or a new volume of session laws, or a law review volume, a card must be withdrawn from the catalog, the number of the last volume erased, that of the new book added in pencil, and the card replaced in the file. This is a routine task that takes time, —time that could well be saved if there were some other satisfactory manner of recording the information.

In the case of session laws many libraries wish to keep even more specific information than a mere listing of the years available in the library. They will want to present an accurate description of the sessions covered. This involves even more work than an open entry listing.

Statutes are still more complex, for they vary in type and scope, some are official and some are not. To work out an accurate description of each volume or set owned by the library is a very laborious and time-consuming task, as there are often many editions to be puzzled over. Even where the printed cards issued by the Library of Congress are used, great care must be taken to order the correct cards for each set of statutes.

Modern cataloging practice has come to advocate more and more the use of check-lists in place of cataloging on cards when such lists are available and practical. They are only practical if they are complete and accurate.

* Ervin Pollack's Supplement to the Check-List of Session Laws has just been released from the press by the National Association of State Libraries. It is on sale at a price of $2.00 per copy. Orders should be sent to Mr. Dennis Dooley, President, National Association of State Libraries, 341 State House, Boston, Massachusetts. Editor's note.

Lists of Laws Available

Fortunately for the law librarian there are three excellent check-lists that have compiled complete information about statutes and session laws, so that it would be foolish for him to try to dig it out himself. These lists can be used to simplify greatly his cataloging work. They are titled: *Check-list of Session Laws; Check-list of Statutes and Check-list of Senate & House Journals.* All of these volumes[1] have been prepared under the sponsorship of the National Association of State Libraries. Prepared by librarians and for librarians they provide reliable lists which can be utilized easily and effectively in eliminating a great deal of routine cataloging effort.

The lists are arranged alphabetically by state, and present in chronological order all statutes, session laws, or journals, as the case may be, for each state. Entries include publishers, or editors, and pagination so that editions can be identified and matched easily.

It is a very simple matter for a library to check its volumes of statutes, session laws or legislative journals with these check-lists, comparing by edition and number of pages, and indicating in the check-list each volume that is available. This will then provide a complete listing of the library's holdings in that field.

New Supplement Now Available

The *Check-list of Session Laws* covers through 1934. A new Supplement to it has just been issued by the National Association of State Libraries. Prepared by Ervin Pollack, of Columbia University Law Library, its purpose is not to list the sessions from 1934 to date, but it is rather, as the title puts it, *A Supplement with Bibliographical Notes, Emendations, and Additions to the Check-list of Session Laws.* In other words, the Supplement provides additions and corrections to the main volume. Some states, such as Wisconsin and Wyoming, have been completely revised, and notes about special tables in Oregon and Wisconsin laws are added. Everyone who already has the *Check-list of Session Laws* should secure the Supplement by Pollack to use with it, so they will have complete information.

Ample space is provided after the entries for each state in all three of the check-lists to note the volumes which have been published since 1934. There is room to last for several more years.

In the case of sets of decisions and of periodicals no check-lists are available which are practical to use as outlined above. A panel of visible file tubes may be used conveniently for this purpose. Files of this type are often used at hotel desks and at telephone switchboards for quick-reference directories. In panels of this sort each strip is placed in a celluloid holder, and can be removed and replaced very easily, and the order can be changed so as to permit the insertion of new titles when necessary. Thus each title of reports or periodicals owned can be typed on a separate strip and the latest bound volume indicated in pencil. When new volumes are received the panel can be taken from its holder and the new volume numbers added very quickly without having to draw out many drawers of cards, pull steel rods, and all the other steps that are involved in changing an open entry.

In most law libraries requests for

[1] These three volumes are now available at a special price of $3.00 each. Editor's note.

statutes, session laws, periodicals and reports are made directly to a desk attendant rather than by searching through the card catalog. With entries indicated in the check-lists and the panel files that have been mentioned, the desired information will be immediately accessible. These lists can be kept at the reference desk or by the card catalog as convenience might suggest.

For any library that has not yet cataloged these various types of books in a satisfactory manner, or for any library where economy of time requires a change to simplified practices in cataloging, the use of these check-lists and panels for keeping a record of the library's holdings in each of these fields is highly practical. Even for libraries which feel that they must have every book represented in the card catalog it would be exceedingly useful to have these records available at the service or reference desk. Information can be supplied much quicker from such records than from trips to a card catalog.

THE LIBRARY OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS*

By Joseph G. Gauges
Marshal and Librarian
United States Court of Customs and Patent Appeals

The United States Court of Customs Appeals was created by Act of Congress dated August 5, 1909.[1] It was provided in the Act that the principal office of the court be located in Washington, D. C. However, under the law, the court can sit anywhere in the United States and its possessions. Shortly after it was organized for business it did sit in New York City because of an accumulation of cases in that section of the country, but it has since held all of its sessions in Washington.

In 1922[2] a law was passed providing that the judges, if the business of the court would warrant, be assigned for service in certain District of Columbia courts. The judges rendered considerable service under that law until they were given patent jurisdiction. By the Act of March 2, 1929,[3] the name of the court was changed to the United States Court of Customs and Patent Appeals. The Act also conferred on the court jurisdiction of patent and trade-mark appeals formerly vested in the Court of Appeals of the District of Columbia. The latter court retains, however, jurisdiction of patent (equity) cases.

The decisions of the United States Court of Customs Appeals were, and the decisions of the United States Court of Customs and Patent Appeals are, reported annually in their own reports. To date 28 volumes of customs decisions and 12 volumes of patent decisions have been published.

At the time patent and trade-mark jurisdiction was conferred on the court 16 volumes of customs reports had been published. The existing series of re-

* Paper read before the Law Librarians' Society of Washington, D. C., November 18, 1941.
[1] 36 STAT. 105; Section 188 JUDICIAL CODE.
[2] 42 STAT. 839; Section 18 JUDICIAL CODE.
[3] 45 STAT. 1475; Section 196 JUDICIAL CODE.

ports was continued, the customs and patent cases being published in separate volumes consecutively numbered. Thus the first volume of patent reports is Volume No. 17 and the current volume is No. 28.

Our customs reports since 1925 cover decisions rendered during the period from April to April. Our patent reports, which commence in 1929, cover the period from October to October. The pagination of the reports do not conflict because the first 700 pages are dedicated to customs decisions and the patent decisions begin at page 701.

The library of the court is designed primarily for the use of the judges of the court. It is not a public library but a member of the bar may obtain permission to use the library. Permission to withdraw books from the library is not given.

The customs decisions of the court are published in the weekly pamphlets of Treasury Decisions and since July 1938[4] they are given numbers with the prefix C.A.D., meaning customs appeals decision. Formerly they were published in both weekly pamphlets and bound volumes of Treasury Decisions and were given T. D. numbers. Selected customs decisions are also published in the Federal Reporter. All of the patent and trade-mark decisions are published in the Federal Reporter and the United States Patents Quarterly. The Trade-Mark Reporter reports only the trade-mark decisions of this court and other courts.

The court has its own digest covering the first 22 volumes of customs reports and the first 6 volumes of its patent and trade-mark reports.

[4] T. D. 49649 and T. D. 49667; 74 T. D. 32, 99.

There is a Treasury Department digest that covers all the customs cases from the earliest times to 1935, and the new Life-Time Federal Digest embraces all of the customs and patent decisions of this court.

The United States Patents Quarterly was started about the same time this court obtained patent jurisdiction and it therefore contains every patent and trade-mark decision of the court. Its weekly pamphlet service is used as preliminary prints of the decisions.

The library contains a complete set of Treasury Decisions, dating back to 1875; a complete set of the reports of the United States Customs Court (formerly the Board of United States General Appraisers); copies of the various tariff acts since 1789 (it is interesting to note that the second act passed by the first Congress of the United States on July 4, 1789, was a tariff act); the tariff bills in their various forms from 1909 to date; the hearings and reports before the Ways and Means and Finance Committees of Congress on the tariff acts of 1909 to date, including the Reciprocal Trade Agreement Act of 1934 and the Customs Administrative Act of 1938. Customs decisions prior to the creation of the Board of United States General Appraisers will be found in Federal Cases, a set of which we have. We have in bound form the printed records and briefs in every customs appeal filed in this court since the court was established in 1910. We also have in unbound form the printed records and briefs in every patent appeal since 1929.

There is also in the library a set of United States Reports, Corpus Juris, Corpus Juris Secundum, American Digest System, United States Code An-

notated, Federal Code Annotated, National Reporter System and Shepard's United States and Federal Citations.

In our patent section of the library we have a complete set of Commissioner's Decisions (patent decisions compiled from the Official Gazette), Federal Reporter, Federal Supplement, United States Patents Quarterly, Trade-Mark Reporter, Reports of the United States Court of Appeals for the District of Columbia, and the Journal of the Patent Office Society. We also have numerous textbooks on patent and trade-mark law as well as technical books, dictionaries and encyclopedias.

There are at present very few books dealing with the history, growth, and structure of customs duties. The latest book on the subject is *The History of American Customs Jurisprudence* published recently by William H. Futrell. This book gives the historical background of the powers derived from the Constitution and also the statutory authority granted by the Congress of the United States.

In 1923 there was published a book entitled *Through the Customs Maze* by B. A. Levett. This book translates into everyday language the technicalities of the customs laws and procedure and imparts some idea of the elaborate system that has grown up in the collection of customs duties.

In 1924 Professor Wayne E. Butterbaugh of Syracuse University published a book entitled *Principles of Importing*. This work is exclusively devoted to importing and was used in the College of Business Administration of Syracuse University in what is believed to have been the first course devoted to the study of that subject.

There have been a number of articles written relating to the customs and patent jurisdiction of the court, a notable contribution being an address delivered before the Federal Bar Association of Washington, D. C., on October 3, 1932, by the late Honorable William J. Graham, formerly Presiding Judge of this court. A reference to these articles may be found in the *Index to Legal Periodicals* under the appropriate heading.

Council of National Library Associations

The Joint Committee on Relations Between National Library Associations created by the A.L.A. Council, December 1939, is now a Council of National Library Associations pursuant to action taken by representatives of national library associations at a meeting held at the Drake Hotel, Chicago, on December 29, 1941. President Sidney B. Hill, A.A.L.L. representative on this Council, was appointed a member of the Committee to Consider Projects to be Undertaken or Sponsored by the Council and to Recommend Organization Procedure. The Council will serve as a clearing house for information and as a planning board to deal with common problems of member associations.

CURRENT COMMENTS

Milwaukee Chosen for Annual Meeting

THE HOTEL PFISTER, MILWAUKEE, WISCONSIN, will be the headquarters for the 37th Annual Meeting of the American Association of Law Libraries to be held June 22-24 inclusive, 1942. The Executive Committee of the Association at its mid-winter meeting in Chicago on December 29 voted unanimously to accept the cordial invitations to meet in Wisconsin, extended by Miss Susan M. Drew of the Milwaukee County Law Library and Mr. Gilson G. Glasier of the Wisconsin State Library. The National Association of State Libraries will also meet in Milwaukee at the same time. The Annual Conference of the American Library Association will be held June 22-27 inclusive with headquarters at the Hotel Schroeder, Milwaukee.

Room reservations should be made direct with Mr. Ray Smith, President of the Hotel Pfister. The rates are $2.50 and up with bath. Program announcements for the meeting will be made in the March number of the LAW LIBRARY JOURNAL.

Rothman Reports on the Law Library Journal

FREDERICK B. ROTHMAN, recently appointed law librarian of New York University and chairman of the Association's Committee on LAW LIBRARY JOURNAL, gave a report at the mid-winter meeting of plans to broaden the scope of the Journal and to increase its circulation. Three new departments have been added to the Journal as a result of the recommendations made by Mr. Rothman and his committee: the Lectures given at the Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education, Who's Who in Law Libraries, and Reviews of Reference Tools. It is believed that these new departments will enrich the contents of the Journal and prove of interest to the members of the Association and to subscribers of the LAW LIBRARY JOURNAL.

1941-42 List of Law Libraries

THE LIST OF LAW LIBRARIES IN THE UNITED STATES AND CANADA, printed for the American Association of Law Libraries by the Commerce Clearing House, will be published in June 1942 as a combined 1941-42 list. When printed, copies will be mailed to all members of the Association. Prior to the mid-winter meeting in Chicago, Mrs. Margaret Stevens, law librarian of the University of Arizona and chairman of the Association's Committee on List of Law Libraries, had submitted final, revised copy of the 1941 list. However, by vote of the Executive Committee, it was decided to defer the printing of the list until data for 1942 could be obtained and issue a combined 1941-42 list.

Leonard Oppenheim Law Librarian at Tulane

LEONARD OPPENHEIM, law librarian of Tulane University and a new member of the A.A.L.L., attended the mid-winter meeting in Chicago.

Chapter Petition of D. C. Law Librarians Approved

THE PETITION FOR A CHAPTER, filed by the Law Librarians' Society of Washington, D. C., was unanimously approved by the Executive Committee of the A.A.L.L. at its mid-winter meeting, and this resolution of approval will be presented to the Annual Meeting of the A.A.L.L. in Milwaukee for a final vote by the Association. In support of this petition, the D. C. group attached a copy of the "Annual Report of the Board of Directors for 1941", prepared by O. Willard Holloway, Legislative Reference Librarian of the Social Security Board, now on duty with the United States Army, and Miss Wanda Miller, law librarian of the Library of the General Counsel of the Treasury Department. The report contains summaries of the minutes of the Society since its organization on April 18, 1939, the constitution and by-laws, officers, and reports of committees. It also contains a message of greeting from the Society's president, Joseph G. Gauges, librarian and marshal of the United States Court of Customs and Patent Appeals. The petition was read to the Executive Committee of the A.A.L.L. by Miss Helen Newman, a member of the Board of Directors of the Law Librarians' Society of Washington, D. C. and Executive Secretary of the A.A.L.L.

Law Library Association of Greater New York Visits Court Libraries

THE LAW LIBRARY ASSOCIATION OF GREATER NEW YORK, in accordance with a plan adopted some months ago by its members, has been visiting law libraries which are doing outstanding work in their respective fields. Following its dinner meeting at Angelo's on the evening of December 1st, the Association visited various court libraries: the United States Attorney's Library (Miss Kitty Schwartz, librarian), the United States Circuit Court of Appeals Library (Mrs. Marjorie S. Coleman, librarian), the Judges' Library of the Court of General Sessions (A. Alfred DeVito, librarian), and the District Attorney's Library (Ben Margolin, librarian). The last two libraries are in the magnificent new Criminal Courts Building which was dedicated only last summer, and serve New York County. The first two libraries are located in the United States Court House, which is also a comparatively new building, and serve the federal courts.

Summary Judgment, a new book by the Hon. Bernard L. Shientag, Justice of the New York Supreme Court, First Judicial District, was ready for distribution on December 1st. The book is not available through regular commercial channels. Only two or three organizations have copies for sale. One of these agencies is the Law Library Association of Greater New York. Orders may be placed through *The Legist*, Room 932, 120 Broadway, New York, New York. The book sells for one dollar per copy.

Model Card Catalog to be Reproduced in Book Form

THE MODEL CARD CATALOG FOR THE SMALL LAW LIBRARY, exhibited and described by Miles O. Price, law librarian of Columbia University at the Annual Meeting of the Association at Old Point Comfort, Virginia (See 34 L. LIB. J. 292, Sept. 1941), will be reproduced

in book form according to recent word which the Editor of the Journal has received from Columbia University. Further announcements as to the price of the catalog and the date when it will be ready for distribution will be made in the March number of the Journal.

Susan M. Drew Heads Committee on Cooperation with County Law Libraries

Miss Susan M. Drew, law librarian of the Milwaukee County Law Library, has been appointed by President Hill to serve as chairman of the Association's Committee on Cooperation with County Law Libraries. She will be assisted by Miss Eloise Cushing, librarian, Alameda County Law Library, Mr. J. Oscar Emrich, librarian, Allegheny County Law Library, Miss Gladys Johnson, Mahoning Law Library Association and Mrs. Dorothy K. Hayward, Middlesex Law Library Association.

Committee on Law School Library Statistics

Miss Seva J. Kozitzky, law librarian of Northeastern University, Boston, has accepted appointment to the Association's Committee on Law School Library Statistics of which Miss Lillian McLaurin, law librarian of Vanderbilt University, is the chairman.

Duke Law Library Issues List of Current Legal Publications

"Recent Legal Publications", formerly issued as a part of the Law School Bulletin of Duke University, is now issued separately under the title "Current Legal Publications" and will appear once a month during the academic year. The list is prepared primarily for the use of the faculty and members of the law library staff of Duke University. However, all law librarians will find these lists extremely valuable for checking purposes and the Editor of the Law Library Journal is pleased to announce that Mr. Roalfe, law librarian of Duke University, has expressed his willingness to place on his mailing list librarians who desire to receive these monthly numbers of "Current Legal Publications".

Hollywood Bar Association's "Brief"

The Editor of the *Brief*, published by the Hollywood Bar Association, Hollywood, California, advises us under date of December 11, 1941 that the last previous issue of the *Brief* was volume 2, number 8 and that the present issue, volume 3, number 12 was the only one published in 1941 and follows directly the issue of December 1940.

National Defense Book Campaign

Law Librarians are urged to participate in the National Defense Book Campaign, which started on Monday, January 12. Miss Althea Warren, Room 1630, Empire State Building, New York City, is the director of this campaign to secure gifts of books for the armed forces of the United States. Sponsored by the American Library Association, American Red Cross, and United Service Organizations, the campaign seeks ten million books for U. S. O. houses, Army dayrooms, ships, Naval bases, etc. Books should be taken to libraries where they will be sorted, repaired if necessary, and then sent out to the various units of the armed forces. You will find in your local newspaper lists of collection centers in your area.

PROGRESS REPORT OF THE COMMITTEE TO COMPILE A BIBLIOGRAPHY OF LEGAL BIBLIOGRAPHIES

In many libraries, where extensive research is pursued, there has been a demand for a comprehensive guide to the bibliographic literature of the law. It has become the function of this committee of the American Association of Law Libraries to attempt to compile such a source.

A. Scope

1. Comprehensive bibliography.

Because of the heterogeneous use to which this bibliography will be put, it was felt that it should be comprehensive in nature rather than selective. This will afford greater use of the bibliography to the average library.

2. The search.

The search for bibliographies in the field is taking the committee through the following sources:

a. Treatises in all languages
b. Separate bibliographies
c. Periodicals
d. Published dissertations (foreign and domestic)
e. Government documents
f. Miscellaneous materials

3. Limitations.

The bibliography will be comprehensive for the subjects covered, however the magnitude of the field necessitates a natural restriction of the scope of the bibliography. Hence its emphasis will be on Anglo-American legal literature. It will contain no bibliographies on foreign, ecclesiastical, comparative or international law.

4. Co-operating libraries.

The bibliographic sources noted will not be limited to the findings in any one library, but it has not yet been decided how many libraries will be examined.

B. Progress

1. The examination and listing of the bibliographic findings at the Columbia University Law Library has just been completed by your Chairman. This necessitated the examination of over 50,000 treatises and other sources. Out of these materials, over 2,000 bibliographic entries have been listed on cards under general form and broad subjects (Anglo-American treatises, general jurisprudence, legal history, medical jurisprudence, separate bibliographies, Roman law, primitive law, ancient law, medieval law, bibliographies in legal periodicals, etc.)

2. Mr. Alfred A. Morrison of the University of Cincinnati and a member of the committee, has undertaken the work of compiling a bibliography of check lists which will be a section of the bibliography of legal bibliographies.

C. Program for Immediate Future

1. The next step will be the examination of the collection of the Association of the Bar of the City of New York Library for additions. It is hoped that this will be completed by June.

2. The co-operation of librarians in particular jurisdictions will be sought for the purpose of supplementing the committee's findings on jurisdictional subject matter, *e.g.* Civil Law in Louisiana.

Respectfully submitted,

Ervin H. Pollack, *Chairman*

BOOK REVIEW

AMERICAN BOOK COLLECTORS AND COLLECTING FROM COLONIAL TIMES TO THE PRESENT. *By Carl L. Cannon. New York: H. W. Wilson Company, 1941. 391 pp. $3.00.*

Carl L. Cannon tells an interesting story. He has collected little known facts about the history and the contents of outstanding American book collections. Primarily he deals with collections which have been sold or auctioned away or have been transferred to publicly recognized research libraries. Although the author is not concerned with such important American law libraries as those of Chancellor Kent,[1] Charlemagne Tower,[2] John V. L. Pruyn[3] and Russell Benedict,[4] or with those recently described by Paul M. Hamlin,[5] his book contains many details which are of interest to the law librarian.

Mr. Cannon finds that there are three general purposes which a bibliophile has in mind when he starts out on his collection, though sometimes one or the other of them may not be apparent. As a matter of fact, the prevalence of two of these purposes coincides with distinct eras of American history. So, early-American collections owe their origin to a dire need of practical books in a bookless region. In later times, referred to by Cannon as the "Golden Age", book collecting turned to singular or otherwise rare items which were acquired, often under conditions of stiff competition, for the satisfaction of the collector's pride or perhaps for investment purposes. And thirdly, there are those collectors whose specialized knowledge of a particular subject enables them to collect cannily, often without the book trade's awareness.

The first category of collectors is well represented by William Byrd II (1674-1744) whose library is of particular interest because it contained a "lawyer's complete working library and something more". There were approximately 350 law books, 139 of them in folio size.[6] Many fields of common law were represented in this collection, which contained the recognized standard books of the time. Byrd had much less resort to "clerk's assistants" than became customary in later times. There is also a considerable sprinkling of books on civil law.[7]

The transition of the first to the second period of book collecting is marked by the collection of Thomas Jefferson. In 1770 fire destroyed his first library in which, according to his own testimony, books on common law were predominant.[8] After the destruction of the Library of Congress in the War of 1812,

[1] Described by J. T. Fitzpatrick in 21 L. L. J. 9 (1928).

[2] THE CHARLEMAGNE TOWER COLLECTION OF AMERICAN COLONIAL LAWS. Privately printed for the Historical Society of Pennsylvania, 1890. 298 p.

[3] CATALOGUE OF BOOKS RELATING TO THE LITERATURE OF LAW, collected by the late John V. L. Pruyn of Albany, N. Y. Albany, 1901. 4, 300 p.

[4] ACTS AND LAWS OF THE THIRTEEN ORIGINAL COLONIES AND STATES CONSTITUTING THE COLLECTION MADE BY HON. RUSSELL BENEDICT . . . To be sold on Monday, February 27th, 1922 . . . at the American Art Galleries, New York, 1922.

[5] *In* LEGAL EDUCATION IN COLONIAL NEW YORK (New York, 1939), p. 73 and ff. For the catalog of James Alexander's library (1720), see p. 171; for the catalog of Judge William Smith's library (1770), see p. 183.

[6] For a catalog of this collection, see the first appendix of John Spencer Bassett's THE WRITINGS OF COLONEL WILLIAM BYRD OF WESTOVER IN VIRGINIA ESQR., New York, Doubleday, Page & Co., 1901. The catalog printed there was copied from "a copy of a copy" of the original and is not easily understandable in many details.

[7] The collection contains at least 10 source-books and textbooks on Roman law, with editions by Accursius, Vinnius, Pacius and Anton Perez. There are a few books on Canon law and books by Pufendorf, Grotius and Zouche.

[8] 1 JEFFERSON'S WORKS (ed. by Ford) 467.

Jefferson sold his personal collection to Congress; we have an account of the law books thus transferred to the Library of Congress in the Library's catalog of 1815,[9] except that Jefferson's unique collection of the laws of Virginia does not find detailed mention there. Reading over the cataloged law titles is interesting from several points of view. Most striking is the large percentage of European-Continental law books, primarily on natural law and the law of nations, and the fact that in his common law collection Jefferson remained true to his preference for pre-Blackstonian writers and his inclination to belittle Blackstone's *Commentaries* whose study in the new republic he branded as disloyalty to the principles of the Constitution.[10]

The "Golden Age" of American book collecting found book prices rising to hitherto unheard-of levels. In 1880, Bradford's Laws of New York of 1694 sold at an auction for $1,600. At the Russell Benedict auction (1922) this item sold for $3,000.[11] Such prices tend to place the affected items out of the range of reference collections and into the category of typographical rarissima.

More recently, however, several law libraries have been able to acquire some outstanding collections of law books of such a diversified character as the Vollbehr Collection[12] and that of a Viennese monasterial library;[13] and several southern libraries, such as that of the University of Georgia and law libraries in the State of Louisiana, have greatly added to their holdings by purchases from plantation libraries.[14]

It seems that law book collecting stands at a new cross road. The collection of reference books has been taken over more than ever by institutional libraries which serve an anonymous multitude of lawyers and judges, students and faculty members. Only a few law libraries can afford to do more than fill their everyday needs, and still fewer have financial access to legal rarissima —this field is practically left to the rare book rooms of private collectors or well-endowed research institutions. But what has become of that type of the private collector who, as a true bibliophile, gathered books for their scientific contents and their value for research? Undoubtedly this type of collector is not found as frequently now as it was in the past. But it would be incorrect to say that the huge increase in book production and the rise in prices of old books have eliminated this type of collector. The professional man who collects books on a particular subject, has always collected with a view to qualitative selection.

No longer are institutional libraries merely repositories of general reference works and of other everyday materials. Increasingly they have accumulated collections for the use of the specialist. With this change of objective, libraries had to revise their methods of book selection. In many libraries, the prevailing tendency was to buy uncritically any kind of book, provided it might eventually find its proper place in a "complete" collection. Gradually, however, the

[9] CATALOGUE OF THE LIBRARY OF THE UNITED STATES. Washington, Printed by J. Elliot, 1815.

[10] See J. S. Waterman, *Thomas Jefferson and Blackstone's Commentaries*, 27 ILL. LAW R. 629 (1933).

[11] This item is quoted in ROSENBACH'S, CATALOG (1938) at $18,650.

[12] Acquired by the Library of Congress in 1930. For its 10 percent of law books see J. T. Vance in the REPORT OF THE LIBRARIAN OF CONGRESS FOR 1930, p. 127.

[13] Acquired by the Law Library of Northwestern University; see Note in 30 L.L.J. 251 (1937).

[14] See CANNON, p. 246 and 248.

purchasing program of many libraries has been put on a basis of planned acquisition. For law libraries, it has even been suggested[15] that a comprehensive program be developed, according to which specialized collections on particular subjects would be fairly spaced over the country. It was claimed that such a plan would be of assistance to libraries whose funds were curtailed during the years of the depression, and that it would free relatively large amounts for otherwise neglected fields.

Limitation of funds or saturation with the fundamentals of a law book collection will probably tend toward an increased specialization of law libraries and, thus, clear the way for the general acceptance of methods of planned acquisition. The law librarian will find himself closer to his most interesting duty: that of bibliographical and similar research work. With the refinement of book selection, changes in book ordering methods go hand-in-hand. The librarian will not be able to rely on offers as much as he does now; search for carefully selected items will become a laborious process.

Under such a program of library specialization and planned acquisition, the librarian will become the book collector par excellence. Book collecting will enter a new phase; it will fill a need in the cultural life of our highly organized society.

WILLIAM B. STERN
Los Angeles County Law Library.

CHECK LIST OF NATIONAL REPORTER SYSTEM

Revised to January 15, 1942

	Last Vol. to Appear
Atlantic Reporter, Second Series	21
Advance Sheets	23
Federal Reporter, Second Series	121
Advance Sheets	123
Federal Rules Decisions	1
Advance Sheets	2
Federal Supplement	39
Advance Sheets	41
New York Supplement Reporter, Second Series	28
Advance Sheets	31
North Eastern Reporter, Second Series	36
Advance Sheets	38
North Western Reporter	299
Advance Sheets	1(2d)
Pacific Reporter, Second Series	110
Advance Sheets	119
South Eastern Reporter, Second Series	15
Advance Sheets	17
Southern Reporter, Second Series	3
Advance Sheets	4
South Western Reporter, Second Series	154
Advance Sheets	156
Supreme Court Reporter	61
Advance Sheets	62

[15] See, *e.g.*, J. T. Vance and W. R. Roalfe in 27 L.L.J. 72 and 74 (1934), and A. S. Beardsley in 28 L.L.J. 134 (1935).

CHECK LIST OF CURRENT AMERICAN STATE REPORTS, STATUTES[1] AND SESSION LAWS

Revised to January 1, 1942

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
ALABAMA			
Reports	. . .	West Pub. Co.	240
App. Reports	. . .	West Pub. Co.	29
Session laws	Quadrennial	Secretary of State	1939 Reg. & Ex.
Code, Compilation or Revision		Secretary of State	1940 Code A. 10v. with 1941 P. P.
ALASKA			
Reports	. . .	West Pub. Co.	9
Session laws	Odd years	Secretary of Territory	1941
Code, Compilation or Revision		Auditor of Alaska, Juneau	Comp. L. 1933 1v.
ARIZONA			
Reports	. . .	Bancroft, Whitney & Co.	56
Session laws	Odd years	Secretary of State	Reg. 1941, 1st Spec. 1940 1 vol.
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Code A. 6v. with 1941 P. P.
ARKANSAS			
Reports	. . .	Secretary of State	201
Session laws	Odd years	Secretary of State	Reg. 1941, Ex. 1940
Code, Compilation or Revision		Department of State, Little Rock	Pope's Digest 1937 A. 2v.
		Thomas Law Book Co.	1940 Cum. A. Supp.
CALIFORNIA			
Reports	. . .	Bancroft-Whitney & Co.	17 (2d)
App. Reports	. . .	Bancroft-Whitney & Co.	45 (2d)
Advance Parts	. . .	Bancroft-Whitney & Co.	Weekly
California Decisions	. . .	Recorder Prtg. & Pub. Co.	3
*Advance Parts	. . .	Recorder Prtg. & Pub. Co.	
Session laws	Odd years	Secretary of State	1941, incl. 1940 Extra Session.
Code, Compilation or Revision		Bancroft-Whitney & Co.	1941 Deering Civil Code 1v. 1941 Deering Civil Procedure & Probate Code 1v. 1941 Deering Penal Code 1v. 1937 Deering Political Code 1v. 1937 Deering Commissioners' Code, 2v. 1937 Deering General Laws 2v. 1937 Deering Constitution 1v. 1941 Supp. to Constitution, Codes & General Laws 1v.

[1] In response to suggestions from members of the A.A.L.L., the Editor has revised this Check List to include Statutory Compilations. Because of space limitations only one is listed for each state with the official set listed in preference to unofficial sets. The Editor will be glad to receive additional suggestions from members and subscribers concerning these statutory listings.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
CANAL ZONE			
Reports		Executive Secretary, Panama Canal, Balboa Heights, C. Z.	3
Code, Compilation or Revision		Superintendent of Documents, Washington, D. C.	1934 Code A. 1v.
		The Chief of Office, The Panama Canal, Washington	Supp. No. 1, 1938 Supp. No. 2, 1941
COLORADO			
Reports		A. B. Hirshfield Press, Denver, Colo.	107
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Michie Co.	1935 Stat. 5v. 1941 Replacement v1 with 1940 P. P.
CONNECTICUT			
Reports		E. E. Dissell & Co., Hartford, Conn.	127
*Advance Parts		E. E. Dissell & Co., Hartford, Conn.	
Conn. Supp.		Connecticut Law Journal Pub. Co.	Vol. 8
Superior Ct. Rep.		Bridgeport, Conn.	
Common Pleas Rep.		(Selected cases by Judges)	
*Conn. Law Journal		Weekly continuations	
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		E. E. Dissell & Co., Hartford, Conn.	1930 Gen. Stat. 3v. 1931-33-35 Cum. Supp. 1v. 1937-39 Cum. Supp. 1v. 1941 Supp. 1v.
DELAWARE			
Reports		State Librarian	40
Chancery reports		State Librarian	21
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Delaware State Library, Dover, Del.	1935 Code 1v.
DISTRICT OF COLUMBIA			
Appeals		West Pub. Co.	73
Acts Affecting District of Columbia		John Byrne & Co.	41
Code, Compilation or Revision		Government Printing Office, Washington, D. C.	1940 Code A. 2v.
FLORIDA			
Reports		E. O. Painter Ptg. Co., De Land	145
Session laws	Odd years	Secretary of State	1941 General
Code, Compilation or Revision		Harrison Co., Atlanta, Ga.	1941 Gen. L. 1v.
GEORGIA			
Reports		The Harrison Co.	192
App. Reports		The Harrison Co.	65
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		The Harrison Co.	1933 Code 1v.
HAWAII			
Reports		Clerk of Supreme Court	34
*Advance parts		Clerk of Supreme Court	
Session laws	Odd years	Secretary of Territory	1941
Code, Compilation or Revision		Secretary of Territory	1935 L. 1v.

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
IDAHO			
Reports	. . .	Bancroft, Whitney & Co.	61
Session laws	Odd years	Capital News Pub. Co.	Reg. 1941
Code, Compilation or Revision		Bobbs-Merrill Co.	1932 Code 5v.
		Courtright Pub. Co., Denver	1940 Supp. 1v.
ILLINOIS			
Reports	. . .	Samuel P. Irwin, Bloomington	376
*Advance parts	. . .	Samuel P. Irwin, Bloomington	
App. Reports	. . .	Callaghan & Co.	310
*Advance parts	. . .	Callaghan & Co.	
Court of Claims Reports	. . .	State Printer	10
Session laws	Odd years	Secretary of State	1941 Vols. 1 & 2
Code, Compilation or Revision		The Burdette Smith Co.	1941 Stat. 1v. State Bar Ed.
INDIANA			
Reports	. . .	Secretary of State	217
App. Reports	. . .	Secretary of State	107
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1934 Baldwin's Stat. A. 1v.
IOWA			
Reports	. . .	Superintendent of Printing	229
Session laws	Odd years	Superintendent of Printing	Reg. 1941
Code, Compilation or Revision		Superintendent of Printing	1939 Code 1v.
KANSAS			
Reports	. . .	State Librarian	153
*Advance parts	. . .	State Librarian	
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1935 Gen. Stat. A. 1v. 1939 Supp. 1v.
KENTUCKY			
Reports	. . .	State Librarian	284
*Advance parts	. . .	State Librarian	
Session laws	Even years	State Librarian	Reg. 1940
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1936 Carroll's Stat. A. 1v.
LOUISIANA			
Reports	. . .	West Pub. Co.	197
Session laws	Even years	Secretary of State	Extra & Reg. 1940
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Gen. Stat. 6v. with 1941 P. P.
MAINE			
Reports	. . .	Southward Anthoenson Press, Portland	136
Session laws	Odd years	Book Dealers in Portland and Bangor	Reg. 1941, incl. 1940 Spec. Sess.
Code, Compilation or Revision		Department of State	1930 Stat. 1v.
MARYLAND			
Reports	. . .	Century Printing Co., Baltimore	179
*Advance parts	. . .	Century Printing Co., Baltimore	
Baltimore City Reports	. . .		4v. (1919-1928)
Session laws	Odd years	State Librarian	Reg. 1941
Code, Compilation or Revision		Dept. of Legislative Reference, Baltimore	1939 Code A. 2v.

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
MASSACHUSETTS			
Reports	. . .	Wright & Potter Ptg. Co., Boston	308
Advance parts	. . .	Wright & Potter Ptg. Co., Boston	
App. Div. Reports	. . .	Lawyers' Brief & Pub. Co., Boston	6
Session laws	Odd years	Secretary of the Commonwealth	Reg. 1939
Code, Compilation or Revision		Department of Secretary	1932 Gen. L. 3v.
MICHIGAN			
Reports	. . .	Callaghan & Co.	294
*Advance parts	. . .	Callaghan & Co.	
Session laws	Odd years	Secretary of State	1939
Code, Compilation or Revision		Secretary of State	1929 Com. L. 4v.
		Mason Pub. Co.	1940 Cum. Supp. A. 1v.
		Mason Pub. Co.	1941 Supp. 1v.
MINNESOTA			
Reports	. . .	Johnson Pub. Co., St. Paul	209
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Mason Pub. Co.	1927 Stat. A. 2v. 1940 Cum. Supp. A. 1v. 1941 Supp. A. 1v.
MISSISSIPPI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	190
Session laws	Even years	Secretary of State	Reg. 1940 Local & Priv. 1940
Code, Compilation or Revision		Harrison Company	1930 Code A. 2v. 1938 Cum. Supp. 1v
MISSOURI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia	346
App. Reports	. . .	E. W. Stephens Pub. Co., Columbia	234
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Secretary of State	1939 Rev. Stat. 3v. Supp. 1941
MONTANA			
Reports	. . .	Bancroft, Whitney & Co.	111
Session laws	Odd years	State Publishing Co., Helena	Reg. 1941
Code, Compilation or Revision		State Publishing Co., Helena	1935 Code A. 5v.
		Courtright Pub. Co.	1939 Supp. A. 1v
NEBRASKA			
Reports	. . .	State Librarian	138
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Department of State	1929 Com. Stat. A. 1v.
		Supplement Printing Co., Lincoln	1941 Supp. 1v.
NEVADA			
Reports	. . .	Secretary of State	60
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Bender-Moss Co., San Francisco	1929 Com. L. A. 6v. with 1930-38 P. P.
NEW HAMPSHIRE			
Reports	. . .	C. D. Hening, Lancaster, N. H., Reporter	90
*Advance parts	. . .	C. D. Hening, Lancaster, N. H.	
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Secretary of State	1926 Pub. L. 2v

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
NEW JERSEY			
Law Reports	. . .	Soney & Sage Co.	125
Equity Reports	. . .	Soney & Sage Co.	129
Miscellaneous Reports	. . .	Soney & Sage Co.	18
Advance parts covering above	. . .	Soney & Sage Co.	
Session laws	Annual	Secretary of State	1940
Code, Compilation or Revision		Department of State	1937 Stat. 5v.
		Soney & Sage, West	1938-39-40 Cum. Supp. 1v.
NEW MEXICO			
Reports	. . .	West Pub. Co.	44
Session laws	Odd years	Secretary of State	Spec. 1940, Reg. 1941
Code, Compilation or Revision		Courtright Pub. Co.	1929 Stat. A. 1v. 1938 Supp. A. 1v.
NEW YORK			
Reports	. . .	Williams Press, Inc., Albany	284
App. Div. Reports	. . .	Williams Press, Inc.	261
N. Y. Miscellaneous	. . .	Williams Press, Inc.	175
*Advance parts covering all the above	. . .	Williams Press, Inc.	
State Department Reports	. . .	Publishers Ptg. Co., 207 W. 25th St., N. Y. City**	61
N. Y. State Labor Relations Board decisions	. . .	N. Y. Industrial Commissioner, 80 Centre St., N. Y. C.	2
N. Y. Supplement	. . .	West Pub. Co.	28 (2d)
*Advance parts	. . .	West Pub. Co.	30 (2d)
Session laws	Annual	Williams Press, Inc.	1941
Code, Compilation or Revision		Edward Thompson Co.	1939 Laws 5v. 1941 Supp. 1v.
NORTH CAROLINA			
Reports	. . .	Secretary of State	219
*Advance parts	. . .	Secretary of State	
Session laws	Odd years	Secretary of State	1941 Public Laws 1941 Pub.-Loc. & Priv.
Code, Compilation or Revision		The Michie Co.	1939 Code A. 1v. 1941 Supp. 1v.
NORTH DAKOTA			
Reports	. . .	Lawyers Co-op. Pub. Co.	70
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Lawyers Cooperative	1913 Com. L. A. 2v. 1925 Supp. A. 1v.
OHIO			
Reports	. . .	The F. J. Heer Printing Co., Columbus	137
App. Reports	. . .	The F. J. Heer Printing Co., Columbus	65
*Advance Reports	. . .	Ohio State Bar Ass'n, Columbus	
Ohio Opinions	. . .	W. H. Anderson Co., Cincinnati	20
*Advance Reports	. . .	Ohio Law Rep. Co., Cincinnati	
Ohio Supp.	. . .	West Pub. Co.	5
*Advance Reports	. . .	West Pub. Co.	
Session laws	Odd years	Secretary of State	Reg. 1939, Ex. 1940
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1940 Throckmorton's Code A. 1v.
OKLAHOMA			
Reports	. . .	Times Jour. Pub. Co., Oklahoma City	188

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
OKLAHOMA—Continued			
Criminal Reports	. . .	Cooperative Pub. Co., Guthrie, Okla.	69
Session laws	Odd years	Cooperative Pub. Co., Guthrie, Okla.	1941
Code, Compilation or Revision		Harlow Publishing Co.	1931 Stat. A. 2v. 1940 Supp. A. 2v. 1942 Supp.
OREGON			
Reports	. . .	Bancroft, Whitney & Co.	164
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Bancroft, Whitney & Co.	1940 Com. L. A. 10v. with 1941 P. P.
PENNSYLVANIA			
State Reports	. . .	Geo. T. Bisel & Co., Philadelphia	340
Superior Ct. Reports	. . .	Geo. T. Bisel & Co., Philadelphia	142
District and County Reports	. . .	Legal Intelligencer, Philadelphia	40
Advance parts of all the above	. . .	Legal Intelligencer, Philadelphia	
Session laws	Odd years	Bureau of Publication	1941 Reg., Spec. Sess. 1940
Code, Compilation or Revision		West Pub. Co.	1936 Purdon's Stat. 1v.
PHILIPPINES			
Reports	. . .	Bureau Insular Affairs, Washington	63
Commonwealth Statutes	. . .	Dept. of Interior	1935-37 Vol. 1 1935 Penal Code 3v. 1936 Supp. 1v.
Code, Compilation or Revision		Lawyers Coop. Pub. Co.	1925 Code of Civil Proc. 1v.
PUERTO RICO			
Reports	. . .	Dept. of Interior, Washington	49
Advance parts	. . .	Secretary-Reporter, San Juan	
Session laws	Annual	Dept. of Interior, Washington	1941
Code, Compilation or Revision		Dept. of Interior	1930 Civil Code
RHODE ISLAND			
Reports	. . .	State Librarian	62
Superior Ct. Decisions	. . .	Pub. by R. I. Law Record, Providence	12
Acts and Resolves	Annual	State Librarian	1941
Public laws	Annual	State Librarian	1941
Code, Compilation or Revision		Secretary of State	1938 Gen. L. A. 2v. 1939-40 Pub. L. 1v.
SOUTH CAROLINA			
Reports	. . .	R. L. Bryan, Columbia	195
*Advance parts	. . .	R. L. Bryan, Columbia	
Session laws	Annual	State Library	1941
Code, Compilation or Revision		Michie Co.	1932 Code A. 4v.
		R. L. Bryan Co.	1934 Supp. 1v. 1936 Supp. 1v. 1938 Supp. 1v.
SOUTH DAKOTA			
Reports	. . .	State Pub. Co., Pierre	66
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1939 Code A. 4v.

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
TENNESSEE			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	177
Court of Appeals	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	24
Session laws	Odd years	Printing Dept., Tenn. Industrial School, Nashville	1941 (Private) and 1941 (Public)
Code, Compilation or Revision		Michie Co.	1938 Code A. 1v. 1939-40 and 1941 pamphlet supp.
TEXAS			
Reports	. . .	Hicks-Gastom Co., Dallas	136
Criminal Reports	. . .	Hicks-Gastom Co., Dallas	140
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Vernon Law Book Co.	1936 Stat. 1v. 1939 Cum. Supp. 1v.
UNITED STATES			
Reports, Official	. . .	Government Printing Office	311
*Advance parts	. . .	Government Printing Office	312
Reports L. Ed.	. . .	Lawyers Co-op. Pub. Co.	85
Advance parts	. . .	Lawyers Co-op. Pub. Co.	86
Sup. Ct. Rep.	. . .	West Pub. Co.	61
*Advance parts	. . .	West Pub. Co.	62
Att'y. Gen. Opinions	. . .	Government Printing Office	38
*Advance parts	. . .	Government Printing Office	40
Aviation reports	. . .	U. S. Aviation Reports, Inc., Baltimore	1941
Court of Claims	. . .	Government Printing Office	93
Comptroller Gen. Dec.	. . .	Government Printing Office	20
*Advance parts	. . .	Government Printing Office	21
Customs Court Reports	. . .	Government Printing Office	5
Customs and Patent Appeals: Customs	. . .	Government Printing Office	28
(same): Patents	. . .	Government Printing Office	28
Fed. Anti-Trust Dec.	. . .	Government Printing Office	12
Fed. Com. Com. Rep.	. . .	Government Printing Office	6
Fed. Power Com. Rep.	. . .	Government Printing Office	1
Federal Reporter	. . .	West Pub. Co.	121 (2d)
*Advance parts	. . .	West Pub. Co.	123 (2d)
Federal Supp.	. . .	West Pub. Co.	39
*Advance parts	. . .	West Pub. Co.	41
Fed. Trade Com. Dec.	. . .	Government Printing Office	32
I. C. C. Rep.	. . .	Government Printing Office	244
I. C. C. Motor Carrier Dec.	. . .	Government Printing Office	27, & 35
I. C. C. Valuation Rep.	. . .	Government Printing Office	48
Interior Dept., Decisions	. . .	Government Printing Office	56
Natl. Labor Rel. Bd. Decisions and Orders	. . .	Government Printing Office	23
Advance parts	. . .	Government Printing Office	27
Patents, Dec. of Com. of	. . .	Government Printing Office	1940
Puerto Rico Federal	. . .	Lawyers Co-op. Pub. Co.	13
Sec. and Ex. Com. Dec.	. . .	Government Printing Office	7
*Advance parts	. . .	Government Printing Office	7 Part 2
Sec. and Ex. Com. Judicial Dec.	. . .	Government Printing Office	1
Statutes at Large	. . .	Government Printing Office	54 Part 2

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Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
UNITED STATES—(Continued)			
Tax Appeals, Board of . . .		Government Printing Office	43
Advance parts . . .		Government Printing Office	44
Treasury Decisions . . .		Government Printing Office	75
*Advance parts . . .		Government Printing Office	77
Treas. Dec. (Int. Rev.) . . .		Government Printing Office	35
Code, Compilation or Revision		Government Printing Office	1940 Code 3v.
UTAH			
Reports . . .		Arrow Press	99
Session laws	Odd years	Inland Ptg. Co., Kaysville	Reg. 1941 1st & 2nd Spec. 1941
Code, Compilation or Revision		Inland Printing Co., Kaysville, Utah	1933 Stat. A. 1v.
		Courtright Pub. Co.	1939 Supp. A. 1v.
VERMONT			
Reports . . .		State Librarian	111
Session laws	Odd years	State Librarian	Reg. 1941, Spec. 1940-1941
Code, Compilation or Revision		Vermont State Library	1933 Pub. L. 1v.
VIRGINIA			
Reports . . .		Secretary of Commonwealth	177
Session laws	Even years	Secretary of Commonwealth	1940
Code, Compilation or Revision		Michie Co.	1936 Code A. 1v.
		Michie Co.	1940 Cum. Supp. A 1v.
WASHINGTON			
Reports . . .		Bancroft, Whitney & Co.	8 (2d)
Advance parts . . .		Bancroft, Whitney & Co.	
Session laws	Odd years	State Law Librarian	1941
Code, Compilation or Revision		Frank Pierce, Seattle	1939 Code A. 2v.
WEST VIRGINIA			
Reports . . .		Secretary of State	121
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Michie Company	1937 Code A. 1v.
		Michie Company	1939 Supp. A. 1v. 1941 Supp.
WISCONSIN			
Reports . . .		Callaghan & Co.	236
Session laws	Odd years	State Bur. of Purchase, Madison	1941
Biennial compilation by the State Reviser . . .		State Bur. of Purchase, Madison	1939
Code, Compilation or Revision		Bureau of Purchases, Madison	1941 Stat. 1v.
WYOMING			
Reports . . .		Prairie Pub. Co., Casper	56
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1931 Stat. 1v.
		Secretary of State	1940 Cum. Supp. 1v.

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